IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8569 OF 2005

Horizon Flora India Ltd. Petitioner

versus

M/s.Preesman Roses B.V. & ors. Respondents

Ms.Chandana Salgaocar Radia for petitioner.

Mr.Rao with Bhalwal i/by M/s.Vyas & Bhalwal for respondent no.3.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 10th February 2006

PC :

1. Heard learned counsel for petitioner and respondent no.3. Since the application for amendment made in the Trial Court has been contested by respondent no.3 for and on behalf of defendant nos.1 and 2 (respondents 1 and 2 herein), their presence is not necessary and is dispensed with.

2. The petitioner is original plaintiff in Regular Civil Suit which has been filed in the Court of Special Civil Judge, Senior Division, at

Pune being Special Civil Suit No.847 of 2000. The suit is for breach of contract and damages and the claim arises out of an agreement to supply certain materials which are more particularly described in the plaint. The defendants were served with the Writ of Summons and written statement is filed on their behalf. After the written statement and the counter claim was filed and issues were framed, the instant application for amendment is made. The amendment application (Exhibit-47) purports to incorporate some particulars and details with regard to the transaction in question as also seeks to amend the certificate which was issued by the authorities.

3. Shri Rao - learned counsel appearing for respondent no.3 submits that the amendment could not have been allowed as an attempt is made to introduce material which was already within the knowledge of the petitioner. When the matter is ripe for hearing, at a belated stage, the amendment is sought to be made.

4. With the assistance of learned counsel for both sides I have perused the application for amendment, reply thereto and the order passed by

the learned Civil Judge thereon. The learned Trial Judge has observed thus :-

> Perused application and Say (Exh.50). Heard both side at length. This suit is for damages for supply of infected plants. The proposed amendment no where depends upon subsequent events. The proposed amendment is alleged to be explanatory. If we pass the proposed amendment, it is seen that the Plaintiff want to renovate the entire material pleading, which is not admissible at the stage of hearing. The Defendant may have acquired certain benefits from the lacuna of the pleading of Plaintiff. That cannot be taken off. The proposed amendment may hit by limitation. The typographical mistakes have been alleged, but does not look so. Plaintiff wants to change the numbers. Hence it is not typographical mistakes. Considering these circumstances, I pass following order.
>
> ORDER : Application is rejected."

5. From a reading of the application for amendment as also the pleas raised in plaint and the reliefs claimed, it is not possible to sustain the above finding and the conclusions of the learned Judge. It is well settled that liberal principles have to be applied while allowing the amendment applications. Despite the amendment to the CPC the position remains that all such amendments which are introducing particulars and which do not change the structure

of the suit or alter the cause of action as also affect the accrued rights, should be permitted. In the application for amendment it is pointed out by the plaintiff-petitioner that the amendments are explanatory. The matter is technical and, therefore, some particulars with a view to better explain the issues involved and the controversy raised are necessary. The nature of the suit is not being changed nor the respondents are prejudiced in any manner. It is also pointed out that oral evidence has not yet commenced.

6. In the reply to the said amendment application the respondents have not been able to point out as to how such amendments would change the nature of the suit, which is a suit, claiming damages on account of breach of contract. The relief of compensation is not being amended either. If the only objection is that the amendments are belated, then the law postulates compensating the parties like the respondents herein by direction of payment of costs. Having perused the entire materials, in my view, the Trial Court was in error in rejecting the application for amendment. The order of the Trial Court refusing to do so is quashed and set

aside. Application for amendment (Exhibit-G) is allowed. Amendment to be carried out within a period of two weeks. However, the petitioner shall pay to the respondents Rs.5,000/- (Rs.Five thousand only) towards costs. Costs condition precedent. Upon the amendment being carried out and amended plaint being served, the respondents are at liberty to file additional written statement which shall be filed within a period of six weeks from the date of receipt of a copy of the amended plaint.

7. Needless to observe that all contentions of both sides on merits of the pleas raised in the amendment application are kept open. It would be open for the respondents to raise such contentions as are permissible in law including the plea of limitation. Costs to be deposited in the Trial Court or alternatively to be paid to the advocate for the respondents in the Trial Court. Petition disposed of.

(S.C.DHARMADHIKARI, J.)